

Ex. B

1 THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION
4 _____:
5 JOE HOLCOMBE, et al., :
6 Plaintiffs, :
7 vs. :No. 5:18-CV-00555-XR
8 _____:
9 Defendant. :
10 _____:
11 Bethesda, Maryland
12 Wednesday, August 12, 2020
13 Video Conference/Videotaped Deposition of:
14 DANIEL WEBSTER
15 called for oral examination by counsel for
16 Defendant, pursuant to notice, at 5413 Harwood Road,
17 Bethesda, Maryland, before Sheri C. Stewart, RMR, of
18 Esquire Deposition Solutions, a Notary Public in and
19 for the State of Maryland, beginning at 10:06 a.m.,
20 when were present on behalf of the respective
21 parties:
22

1 A P P E A R A N C E S:
2 On behalf of Plaintiffs:
3 TOM JACOB, ESQUIRE
4 JAMAL ALSAFFAR, ESQUIRE
5 STEPHEN SHANDLER, ESQUIRE
6 JOSEPH SCHRIEBER, ESQUIRE
7 APRIL STRAHAN, ESQUIRE
8 JOCELYN KRIEGER, ESQUIRE
9 DANIEL CHUNG, ESQUIRE
10
11 On behalf of Defendant:
12 AUSTIN FURMAN, ESQUIRE
13 U.S. Department of Justice
14 Federal Tort Claims Act Staff
15 3CON
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20
21 Also present: Elisheva Galiley, Videographer
22

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1 THE VIDEOGRAPHER: Good morning. We are
2 now on the record. The time is now 10:06 a.m.
3 on August 12, 2020.
4 This begins the videotaped deposition of
5 Daniel Webster, taken in the matter of Joe
6 Holcombe, et al., versus the United States of
7 America, Case Number of which is
8 5:18-CV-00555-XR.
9 My name is Elisheva Galiley. I am your
10 remote videographer today. The court reporter
11 is Sheri Stewart. We are representing Esquire
12 Deposition Solutions.
13 As a courtesy, will everyone who is not
14 speaking please mute your audio and please
15 remember to unmute your audio when you are
16 ready to speak.
17 Counsel, will you please state your name
18 and whom you represent, after which the court
19 reporter will swear in the witness.
20 MR. FURMAN: This is Austin Furman
21 defending the United States.
22 MR. JACOB: Tom Jacob for the plaintiffs.

1 MR. ALSAFFAR: Jamal Alsaffar for the
2 plaintiffs.
3 MR. SHANDLER: Stephen Shandler for the
4 United States.
5 MR. SCHRIEBER: Joseph Schrieber for the
6 plaintiffs.
7 MS. STRAHAN: April Strahan for the
8 plaintiffs.
9 MS. KRIEGER: Jocelyn Krieger for the
10 United States.
11 MR. CHUNG: Daniel Chung for the
12 government, for the United States.
13 P R O C E E D I N G S
14 WHEREUPON,
15 DANIEL WEBSTER,
16 called as a witness, and having been first duly
17 sworn, was examined and testified as follows:
18 EXAMINATION BY COUNSEL FOR PLAINTIFFS
19 BY MR. FURMAN:
20 Q Thank you. And good morning, Dr. Webster.
21 A Good morning.
22 Q Can you hear me okay?

1 A Yes.
2 Q Good. I'll try to speak up. If at any
3 point during the deposition you can't hear me,
4 certainly let me know. We're all adapting to the
5 technology and the new age that we live in
6 currently, so I appreciate you bearing with us.
7 Could you please state your full name
8 for the record?
9 A Daniel William Webster.
10 Q Thank you, Dr. Webster.
11 And you indicated before we went on
12 video that you're currently located at your home
13 address; is that right?
14 A That's correct.
15 Q Dr. Webster, how are you feeling this
16 morning?
17 A I'm feeling fine. Thank you.
18 Q Glad to hear that. Again, I appreciate
19 your patience with the technology. This morning
20 we're going to be going through, obviously, your
21 reports, some documents. I have a screen share
22 function with my technology that allows me to share

1 my screen. We'll try doing that. If it doesn't
2 work, I've got a laptop here. Your attorneys say
3 you have a laptop. We might have to switch to that.
4 So I appreciate being flexible during the process.
5 A Sure.
6 Q Have you -- thank you.
7 Have you ever had your deposition
8 taken before?
9 A Yes.
10 Q Have you ever testified in court?
11 A Yes.
12 Q And has any of that testimony been other
13 than as an expert witness?
14 A No.
15 Q All right. We'll get into that in a
16 little bit. I'm sure you're familiar -- I'm going
17 to quickly go over the ground rules for the
18 deposition.
19 During the deposition, please direct
20 questions to me and not to your attorney, unless
21 there's an issue of privilege. Your attorney may
22 make objections throughout the deposition, but

1 A Any what kind of experience?
 2 Q Clinical?
 3 A No.
 4 Q All right. And then just a few more
 5 professional questions.
 6 Do you have any professional
 7 licenses?
 8 A No.
 9 Q And, obviously, as you testify in this
 10 case, I have to assume that your -- Johns Hopkins is
 11 fine with you performing work outside of your
 12 employment with them?
 13 A Yes.
 14 Q Do you -- other than testifying as an
 15 expert witness in litigation, do you perform any
 16 other outside consulting or -- that type of work?
 17 A Occasionally.
 18 Q Are you doing any right now, other than
 19 this case?
 20 A I am a consultant on a project supported
 21 by Arnold Ventures, some consultant to John Jay
 22 School of Criminal Justice in New York to help

1 develop a concept paper for community violence
 2 prevention.
 3 Q Okay. And does your employer place any
 4 restrictions on your outside employment, your
 5 employer being Johns Hopkins?
 6 A Yeah. I mean, I wouldn't be able to state
 7 them explicitly, but you can't, in essence, have
 8 another full-time job doing -- in the consulting
 9 while you're also drawing a full-time salary. So --
 10 Q That makes sense.
 11 A So some of my independent consulting work
 12 is limited by that, of course. The demands of being
 13 a full-time faculty at Johns Hopkins are pretty
 14 substantial.
 15 Q I can imagine.
 16 Turning just to your areas of
 17 expertise. In your report, you note, for your
 18 graduate training, you had advanced classes in
 19 epidemiology, research methods, statistical
 20 analysis, economics and sociology.
 21 Does that sound right?
 22 A Yes.

1 Q In your graduate studies, did you have any
 2 sort of clinical courses, like psychological
 3 assessment, anything like that?
 4 A No graduate courses in clinical
 5 assessment.
 6 Q Right. And concerning your expertise as a
 7 researcher, so obviously these -- most of these, you
 8 know, papers and projects are multiperson projects.
 9 And typically, if you're involved in a project, what
 10 role do you have with respect to the research
 11 design?
 12 A I am commonly actually designing research,
 13 developing the proposals of what we study and how we
 14 study it. I often involve junior -- junior faculty
 15 and graduate students that I supervise in carrying
 16 out that work.
 17 Q As part of the research design, would you
 18 be the person to determine what statistical analyses
 19 is used?
 20 A Yes.
 21 Q And would you also, as part of that,
 22 determine what the, for example, the P values would

1 be for significance testing?
 2 A Yeah. One thing I'll just clar- -- just
 3 to be clear.
 4 Q Sure.
 5 A You know, these are collaborative efforts,
 6 so, you know, I'm the senior researcher within --
 7 within our center, of course, but I don't want to
 8 portray this as I made every decision relevant to
 9 every publication. That's not true.
 10 But -- we do work as a team, but as a
 11 senior leader I play an important role.
 12 Q That's understandable.
 13 What about when it's time to run the
 14 data, to run the statistical analyses, would you do
 15 that?
 16 A I typically would not do the statistical
 17 analyses. I'd go over to output, with whoever was
 18 doing those, to make sure that things look right.
 19 But I was typically not doing that myself.
 20 Q And what about the writing of the article,
 21 who usually takes the first draft of writing up an
 22 article or paper?

1 A That can vary quite a bit, actually. So
 2 either the lead or the senior author will have the
 3 heaviest role in that, and sometimes different parts
 4 are divvied up.
 5 So, again, it's something that we
 6 typically decide project by project, paper by paper.
 7 Q Sounds good.
 8 As far as teaching, what subject
 9 areas do you currently teach in?
 10 A I teach a course called Understanding and
 11 Preventing Violence. I also am doing a seminar
 12 currently called Reimagining More Effective and Fair
 13 Public Safety. And I have a new course coming out
 14 in the spring.
 15 Q And what's that called?
 16 A I know the course, I don't know the title
 17 of that. But it's problems -- it's problem-solving
 18 and gun violence.
 19 Q Have you ever taught any research methods
 20 courses?
 21 A Yes.
 22 Q Have you ever taught any statistics

1 courses?
 2 A No. Within the research methods courses
 3 we cover some statistical analysis, but they're not
 4 listed as statistics courses.
 5 Q In the research methods course that you've
 6 taught, is that the undergraduate or graduate level?
 7 A Graduate for master's and doctoral
 8 students.
 9 Q That's a course on epidemiological
 10 methods?
 11 A The course that I taught as a lead
 12 instructor for many years and as a co-instructor for
 13 also a number of years, was Research Methods and
 14 Health Policy.
 15 Q And I'm assuming, I guess, the course
 16 covers how to design different types of studies to
 17 study different public health problems?
 18 A Exactly.
 19 Q Thank you.
 20 Dr. Webster, in what fields do you
 21 consider yourself to be an expert?
 22 MR. JACOB: Objection, form.

1 A I consider myself an expert in gun
 2 violence, in gun violence prevention. Those are my
 3 specialty areas. I also have expertise relevant to
 4 substance abuse and substance abuse policy.
 5 Those are the areas that I focus most
 6 of my work on, is violence, specifically gun
 7 violence, and then substance abuse issues.
 8 Q And more generally, do you consider
 9 yourself an expert in the field of epidemiology?
 10 MR. JACOB: Objection, form.
 11 A I use epidemiology in my work in the
 12 content areas that I just described.
 13 BY MR. FURMAN:
 14 Q In the cases that you've testified in --
 15 either in deposition or trial, have you been
 16 qualified as an expert in the field of epidemiology?
 17 MR. JACOB: Objection, form.
 18 A I'm not sure how to answer the question to
 19 be honest with you. Maybe you could restate.
 20 BY MR. FURMAN:
 21 Q Sure. As far as -- when you're giving
 22 expert testimony in Federal Court and I think most

1 state courts, you have to apply a certain
 2 methodology in order to arrive at opinions. And I
 3 would suspect that, in your case, your background
 4 and research in, you know, epidemiological studies,
 5 that the methodology that you would employ to
 6 provide those types of opinions would be
 7 epidemiology --
 8 A That's correct.
 9 Q -- right?
 10 A That's correct.
 11 Q Do you consider yourself an expert in
 12 psychology?
 13 MR. JACOB: Objection, form.
 14 A No.
 15 BY MR. FURMAN:
 16 Q Do you consider yourself an expert in
 17 social work?
 18 MR. JACOB: Form.
 19 A No.
 20 BY MR. FURMAN:
 21 Q Do you consider yourself an expert in mass
 22 shootings?

1 factors and trying to explain community level risk.
 2 So I think epidemiology works on both
 3 of those levels, and my research would be the same.
 4 Q And does your research focus on individual
 5 factors or just community-based factors?
 6 A Both.
 7 Q What aspects of your research focus on
 8 individual factors?
 9 A Well, a study that I was lead
 10 co-investigator on that I think is quite relevant to
 11 this case was a case-controlled study to understand
 12 what factors were predictive of lethal outcomes when
 13 there was eminent partner violence, and we very
 14 extensively examined the incredibly broad range of
 15 potential risk and protective factors to discern
 16 which were and were not associated with lethal
 17 outcomes.
 18 Q And with respect to the research you just
 19 referenced referring to individual risk factors,
 20 identifying individual -- would you agree that
 21 identifying individual risk factors is different
 22 than predict whether a specific individual will

1 commit domestic violence?
 2 MR. JACOB: Objection, form.
 3 A A risk factor applies very directly to the
 4 probability that an individual will commit an act or
 5 have a particular outcome that you are studying.
 6 It's not intended to be 100 percent certain, but
 7 that's the whole idea, is based upon the actual
 8 experience at the individual level.
 9 BY MR. FURMAN:
 10 Q Will you agree that future violence is
 11 hard to predict?
 12 A Is it hard to predict? Yeah, it can be.
 13 Q Well --
 14 A We know -- we know -- we know a great deal
 15 about prediction, but it's not a certain science.
 16 Q Right. Would you agree that, in most
 17 instances, even psychiatrists cannot accurately
 18 predict who will be violent?
 19 MR. JACOB: Objection, form.
 20 A I would say psychiatrists are, in
 21 particular, vantage point and mostly they are --
 22 they have a limited set of information available to

1 them, and quite often they're focusing on what
 2 psychiatrists or psychologists tend to focus on,
 3 which are psychological conditions which is a
 4 limited amount of information.
 5 So it's challenging for them to make
 6 predictions.
 7 BY MR. FURMAN:
 8 Q Well, it's challenging for all of us,
 9 isn't it?
 10 MR. JACOB: Objection, form.
 11 A I -- I stated before that -- that
 12 predicting violence is -- is difficult.
 13 BY MR. FURMAN:
 14 Q Right. And there are many people who have
 15 risk factors for violence who never commit violence,
 16 would you agree with that?
 17 A Yes.
 18 Q And one of the studies you cited in your
 19 report -- I'm going to -- do you recall a study by
 20 Garen Wintemute, Prior misdemeanor convictions as a
 21 risk factor for later violent in firearm-related
 22 criminal activity among authorize purchasers of

1 handguns. Do you recall that study?
 2 A Yes.
 3 Q And that study showed that, among the
 4 purchasers, those with violent misdemeanor
 5 convictions were more likely to be charged with a
 6 new offense after the handgun purchase; is that
 7 right?
 8 A That's correct.
 9 Q And even in that study, around 50 percent
 10 of the persons who had one prior misdemeanor
 11 conviction were never violent again; isn't that
 12 right?
 13 A Well, to be accurate to the data from that
 14 study, they were not arrested for a violent offense.
 15 That does not mean that they were not violent. Most
 16 acts of violent do not result in people being
 17 arrested for violence.
 18 Q But you can't measure that accurately, can
 19 you?
 20 MR. JACOB: Objection, form.
 21 A Yes. Most violent behavior is not
 22 reported and therefore difficult to measure.

1 processes that we know grossly under -- undercount
2 violent crime.

3 Q Right. But if you take less reliable
4 data, you also run the risk of overreporting crime,
5 correct?

6 MR. JACOB: Form.

7 A What researchers do is -- or should do, is
8 they're clear about what their measures are and what
9 the limitations of them -- those measures are.

10 I'm not sure -- if you want to state
11 that question again, I'm not sure exactly where to
12 go with that question.

13 BY MR. FURMAN:

14 Q I think the issue is that, if you're
15 relying on less reliable measures of criminal
16 behavior than criminal charges, you run the risk of
17 identifying behavior that is, in fact, not criminal.

18 Would you agree?

19 A I think you have to be specific to the
20 methodology that you're going to use. So it's very
21 dependent upon the study and your -- what you're
22 able to accurately record.

1 But, look, violence is a phenomenon
2 that is challenging to study because, A, our systems
3 aren't perfect and -- in identifying those through
4 official records, and self-report can sometimes, not
5 always, be fully accurate.

6 Q Right. I mean, that's the problem --

7 A Domestic violence --

8 Q -- with researchers --

9 A Let me just complete that.

10 Domestic violence can be a little --

11 Q Of course.

12 A -- easier because you can talk to victims
13 about their experiences, whereas nondomestic
14 violence, there's not always relationships between
15 perpetrators and victims.

16 So different forms of violence have
17 their own challenges to study.

18 Q Right. And that's one of the problems --
19 or, you know, challenges of being a researcher is
20 finding the best ways to measure what you're trying
21 to measure, right?

22 A Sure.

1 Q And you can't always accurately measure
2 you know, what you want to measure because it's not
3 always someone keeping tabs, like you mentioned,
4 with the violence. You know, just because someone,
5 you know, isn't in the system for being violent
6 doesn't mean they weren't violent is what you're
7 saying, right?

8 A Well, what I'm saying is -- let's bring it
9 back to the matter at hand with the Wintemute study.

10 Wintemute, you know, used a measure
11 that I think is very solid with respect to not
12 having what we would refer to as the false positive
13 measures, meaning that you record someone as
14 committing a violent crime when they did not.

15 The measure that he uses with
16 convictions is one in which there's a whole process
17 of outcomes of investigations and scrutiny
18 throughout the process to determine whether --
19 whether a violent act occurred or not.

20 It is not a particularly good measure
21 to record all violent events for the reasons that I
22 just explained.

1 Q Right. And that false positive problem,
2 that's been particularly a problem with respect to
3 predicting mass shootings, right?

4 MR. JACOB: Objection, form.

5 A You'll have to be a little more explicit
6 with the question.

7 BY MR. FURMAN:

8 Q Well, in your report, you talk about
9 different characteristics of the shooter here that
10 you plan to be consistent with mass shooters in
11 general.

12 Is that fair?

13 A Yes.

14 Q And -- but if you're using those criteria,
15 things like domestic violence, suicidality, those
16 types of factors to predict domestic violence,
17 you're going to be -- or, sorry, mass shooting,
18 you're going to be wrong a lot, lot, lot more than
19 you're correct, would you agree?

20 MR. JACOB: Form.

21 A Yes. Any -- any time you are studying a
22 relatively rare outcome, like a mass shooting, any

1 effort for prediction is going to have a significant
 2 number of false positives.
 3 Q And that's a problem in being able to
 4 foresee events like mass shootings, correct?
 5 MR. JACOB: Objection, form.
 6 A I would not argue that. I think what I
 7 would argue and what I put forward in my expert
 8 testimony is that, while it may be difficult to
 9 predict the scale of violence, predicting that some
 10 act of violence would occur based upon a set of
 11 factors is far easier. And in my expert opinion,
 12 about the nature of this case, indicated to me a
 13 fairly high probability that Mr. Kelley would carry
 14 out violent acts in the future, including violent
 15 acts with firearms.
 16 BY MR. FURMAN:
 17 Q When you say a fairly high probability,
 18 could you put a number on that?
 19 A No.
 20 THE WITNESS: Could I ask you -- just one
 21 second. I -- some -- my dog walker is here,
 22 and I just got to get my dog out for him.

1 Can --
 2 MR. FURMAN: I'll let you go off the
 3 record.
 4 THE WITNESS: -- I have --
 5 MR. FURMAN: That's fine. Yeah, let's
 6 take a five-minute break. No problem.
 7 Off the record, please.
 8 THE VIDEOGRAPHER: We are going off the
 9 record at 11:09 a.m.
 10 (Whereupon, there was a break from
 11 11:09 a.m. until 11:23 a.m.)
 12 THE VIDEOGRAPHER: We are back on video
 13 record at 11:23 a.m.
 14 BY MR. FURMAN:
 15 Q Thank you.
 16 And Dr. Webster, before the break --
 17 and correct me if I'm wrong, but I think you were
 18 saying that -- I had asked you about foreseeability
 19 of a mass shooting, and you had said that, no, you
 20 know, it was -- with respect to the shooter in this
 21 case, it was foreseeable that there'd be some sort
 22 of future violence, and I think you used the term

1 fairly high probability. And I had asked about --
 2 you about whether that was quantifiable.
 3 A I don't have a very specific probability
 4 that I would put on it.
 5 Q Would you say more than 50 percent?
 6 MR. JACOB: Objection, form.
 7 A Again, uncertainty around any -- any such
 8 estimate. But I would say that there -- there would
 9 be, you know, 50 percent or more chance that some
 10 act of serious violence, including with a firearm,
 11 would occur under the set of circumstances with his
 12 history.
 13 Q And when you say "serious violence," what
 14 do you mean by that?
 15 A Well, serious violence could mean anywhere
 16 from threatening, putting a gun to someone's head in
 17 a domestic violence scenario. It could -- it could
 18 mean shooting someone in an altercation, or it could
 19 be as horrific as what happened in Sutherland
 20 Springs.
 21 Q What about a physical altercation of some
 22 sort, would that be serious violence?

1 A It certainly could be, depending on the
 2 nature of the physical altercation.
 3 Q What about a robbery using a firearm?
 4 Would that be your definition?
 5 A That would certainly be included in that
 6 definition.
 7 Q Earlier I asked you about psychiatrists
 8 and you had indicated that, you know, they have
 9 certain diagnoses they use, but are you -- I guess,
 10 first, but wouldn't you agree that -- and we're
 11 talking about predicting violence, we're not talking
 12 about, you know, predicting any sort of, you know,
 13 particular mental health symptom, we're talking
 14 about just violent towards others. And would you
 15 agree that even psychiatrists who specialize in
 16 individual behavior, they struggle to accurately
 17 predict the future violence of their patients?
 18 MR. JACOB: Objection, form, asked and
 19 answered.
 20 A Yes, I would agree that they struggle with
 21 that.
 22

1 BY MR. FURMAN:
 2 Q Um-hum. Do you believe, as an
 3 epidemiologist, that you're better able to predict
 4 future violence than a psychiatrist?
 5 MR. JACOB: Form.
 6 A Our -- our type of prediction is
 7 different. I'm not -- you know, I'm a policy
 8 researcher, and I'm thinking about general
 9 probabilities.
 10 A psychiatrist probably is more
 11 focused on can you predict accurately a particular
 12 outcome for a particular patient.
 13 So it's sort of an apples or oranges
 14 kind of comparison.
 15 BY MR. FURMAN:
 16 Q Well, I'm not sure I agree, Dr. Webster.
 17 I mean, if you're trying to predict the outcome of a
 18 football game and either the outcome is Team A wins
 19 or Team B wins, whether you're coming at it from one
 20 perspective or the other, it's easy to quantify, you
 21 know, if I -- if I predict, you know, using my
 22 methods correct, you know, which team wins

1 75 percent of the time and you predict 50 percent of
 2 the time accurately, then it's clear one method is
 3 better.
 4 Would you agree?
 5 MR. JACOB: Objection, form.
 6 A Well, look, you -- you presented a
 7 hypothetical scenario that I, quite honestly, don't
 8 see as relevant here. Maybe you can spread it more
 9 connected to what -- what we're talking about.
 10 BY MR. FURMAN:
 11 Q Sure. And I think that the relevancy is
 12 you're predicting whether someone's going to be
 13 violent or not violent, and whether you come at that
 14 prediction from -- as a psychiatrist or
 15 epidemiologist, either -- it's a common variable,
 16 either it's true or not true, and you can, you know,
 17 measure and accurately tabulate whether you're
 18 correct or not.
 19 So it's under that, you know,
 20 rationale I'm asking whether you think you can
 21 predict better than a psychiatrist.
 22 MR. JACOB: Objection, form, asked and

1 answered.
 2 A Yeah, I really don't know.
 3 BY MR. FURMAN:
 4 Q I mean, before this case, have you had
 5 instances where you had to predict individual
 6 behavior?
 7 A That's not the nature of my job, no.
 8 Q So you haven't; is that correct?
 9 A Well, other than what we covered earlier
 10 in the --
 11 Q The social work?
 12 A -- the social work component, no. The
 13 nature of my job is as a researcher. And I'm not --
 14 I don't have clinical encounters in which I am
 15 tasked with -- with predicting whether someone will
 16 be violent or not.
 17 Q Understood.
 18 I'd like to back up for a minute to
 19 talk about, you know, epidemiology, studying the
 20 individual risk factors as well as, you know, kind
 21 of broader policy.
 22 And with respect to the policy side,

1 you know, would you agree that some policies that
 2 might work with respect to some people might not
 3 work with respect to others?
 4 A Yes.
 5 Q And the goal typically as an epidemiologist
 6 is to have the -- the greatest net impact, would you
 7 agree with that?
 8 A Yes.
 9 Q To use it in its relevance to this case,
 10 so I know you advocate for permit-to-purchase-type
 11 regulations in states and obviously those add
 12 additional protections to those who can acquire
 13 firearms who otherwise are prohibited from having
 14 them.
 15 But you would agree that -- I mean,
 16 there are always some people who, you know, if they
 17 have the resources, the money, the determination,
 18 the ability, they're going to get a firearm.
 19 Would you agree with that?
 20 A Yes.
 21 Q Dr. Webster, in your prior expert
 22 testimony, prior to this case, would you agree that

1 those cases all involve subject -- subject matters
 2 related to firearms policy and regulations?
 3 A Yeah, yeah, firearm policy and/or just --
 4 you know, there -- there were other -- I was an
 5 expert witness, for example, on -- pardon me, in
 6 litigation against gun shots in West Milwaukee, and
 7 the litigation pertained to the practices of the
 8 licensed gun dealer that facilitated transactions
 9 that led to the shootings of four police officers.
 10 So that wasn't directly a gun policy
 11 question on the table; it was -- had more to do with
 12 practices relevant to risk for firearm injury and
 13 violence.
 14 Q Have you ever testified in any tort
 15 litigation before?
 16 A This is people being sued? I mean, I
 17 think I -- what I just described, did that.
 18 Q This civil case against the gun -- the
 19 gun -- the firearms shop?
 20 A Yes.
 21 Q Other than that, any prior tort work?
 22 A Gosh, this dates back to, I don't remember

1 now, 2008 or so. There was litigation that New
 2 York -- the City of New York brought against about
 3 two dozen gun shops for negligent practices, and I
 4 was an expert in that case.
 5 Q Any other tort occasions?
 6 A No.
 7 Q Prior to this case, have you opined on the
 8 issue of legal causation?
 9 A I'm not sure.
 10 Q You're not sure because you don't
 11 remember?
 12 A Well, I'm not sure if -- if what I was, if
 13 that's very specifically what I was tasked with
 14 doing. I mean, the litigation that I referred to
 15 earlier with the two gunshot cases, my testimony
 16 applied more generally to what we know about gun
 17 dealer practices and oversight and measures to
 18 restrict their practices. And I don't really
 19 remember if the question on the table to me was did
 20 X cause Y.
 21 Q Okay. I appreciate that.
 22 Have you ever opined on the issue of

1 foreseeability of violence in any prior expert
 2 testimony?
 3 A No.
 4 Q Have you ever opined on -- previously on
 5 whether a background check -- whether a background
 6 check or entry of information to a background check
 7 system would have prevented violence before?
 8 A No.
 9 Q And, Dr. Webster, I believe you're being
 10 paid \$400 an hour for this litigation?
 11 A Yes.
 12 Q Is that your standard rate?
 13 A Yes.
 14 Q I'd like to turn to your expert report, if
 15 you want to grab a copy. I'll put it up on the
 16 screen as well.
 17 A Sure.
 18 Q We'll mark this as Exhibit 3.
 19 (Whereupon, Exhibit No. 3 was marked for
 20 identification.)
 21 BY MR. FURMAN:
 22 Q It's a 15-page document dated March 31st,

1 2020.
 2 Dr. Webster, do you have a hard copy
 3 in front of you?
 4 A I do.
 5 Q Okay. And does it begin with, lower
 6 right-hand corner, SSS-2290?
 7 A Yes.
 8 Q And last number should be SSS-2304?
 9 A Yes.
 10 Q And this is the expert report you authored
 11 in this case?
 12 A Yes.
 13 Q Sitting here today -- I mean, I'm sure
 14 there might be a typo or two, no one's perfect, but
 15 is there anything that you need to amend or change
 16 in this report?
 17 A No.
 18 Q Do you have any intention at this time
 19 to -- to amend your report in the future?
 20 A No.
 21 Q Did anyone assist you in preparing this
 22 report?

1 you can get from the FBI supplemental homicide
2 report finds a much larger share of -- of incidents
3 with connections to domestic relationships and
4 domestic violence.

5 Q Right. With respect to the Everytown for
6 Gun Safety, if I instructed you that updated data
7 showed that of the 194 mass shootings in the
8 database, only about 25 percent had a domestic
9 violence connection, would that sound right to you?

10 MR. JACOB: Form.

11 A I'm not sure. I'd have to look at it.

12 BY MR. FURMAN:

13 Q I believe you cited 54 percent, that was
14 your interview with NPR a couple days after the
15 shooting; is that right?

16 A That was based upon our earlier Everytown
17 for Gun Safety report.

18 Q And if that were -- and if that number was
19 flawed, would that change your opinion?

20 A Change my opinion on the percent that have
21 domestic violence connections? Of course.

22 Q What about in this case, with respect to

1 the foreseeability of violence with respect to the
2 shooter?

3 A It really doesn't -- it doesn't matter all
4 that much. I mean, we know that domestic violence
5 is -- is a connection to a lot of incidents and it
6 was, from my opinion in this particular case, he
7 didn't pick Sutherland Springs Church there
8 completely at random. He chose it because of its
9 connections to his wife and her family.

10 So, to me, it's connected to a
11 pattern of domestic violence that is very much about
12 domination and control of an individual.

13 Q Looking at that same sentence and the last
14 two words you use are gun violence.

15 Are you making any distinction there
16 between gun violence and other types of violence?

17 A Yeah. Again, this is -- this is a guy who
18 has a history not just of violence but a history of
19 gun violence. He did threaten his wife with a gun,
20 for example.

21 And what we know generally about the
22 gun playing an important role in domestic violence,

1 both in terms of intimidation, of control, and in
2 terms of the probability of fatal outcome. There's
3 no single factor that has a greater impact on the
4 likelihood of whether a couple with intimate partner
5 violence, whether that turns to lethal outcomes than
6 if the person has a firearm.

7 And their prior threats with the
8 firearm were also highly predictive of -- of future
9 homicidal acts.

10 Q But, Dr. Webster, the research you cite in
11 your report, that's all related to future violence
12 against domestic partners and family members; am I
13 right?

14 A Yes.

15 Q So how does that relate to future acts of
16 violence against persons other than those persons,
17 other than family members?

18 A Well, we know two things. One, is we
19 know, as I was saying before, that there are many
20 mass shooting events that start with a domestic
21 relationship and extend outward.

22 The Sandy Hook Elementary School

1 tragic shooting, for example, Adam Lanza shot and
2 murdered his mother before heading to the school.

3 There's a variety of other scenarios
4 as well in which the first act is carried out
5 against a family member and then other people are
6 targeted, often when they have family connections to
7 them.

8 So -- so domestic violence -- and
9 there's plenty of studies out there that show that
10 domestic violence is a predictor of violence
11 generally, not just specifically in the context of
12 those domestic relationships, particularly the more
13 severe forms of violence.

14 You know, as studied over time, and I
15 teach this in my course Understanding and Preventing
16 Violence, that there's something we refer to as
17 common couple violence that is -- tends to be less
18 severe and it's people who just -- you know, they
19 don't have good interpersonal skills and they scream
20 at people sometimes and they might push or shove or
21 something, but it's not particularly serious.

22 And there's another form of violence

1 that he did not do that.
 2 BY MR. FURMAN:
 3 Q Right. But he also -- because he didn't
 4 have to, right?
 5 MR. JACOB: Objection. Mischaracterizes
 6 the evidence.
 7 A He -- he did not coerce anyone to get a
 8 gun for him. He was able to get a gun from a
 9 licensed gun dealer because there was no records to
 10 indicate he was a prohibited person.
 11 BY MR. FURMAN:
 12 Q Right. But he was coercive towards women,
 13 correct?
 14 A Yeah.
 15 Q And he liked firearms?
 16 A Definitely.
 17 Q And he wanted to get firearms?
 18 A Yeah.
 19 Q And one way to get a firearm if you're a
 20 prohibited person is through a straw purchase?
 21 A Yeah.
 22 Q And I understand that you -- actually, it

1 never happened -- but you're certainly an expert
 2 entitled to give an opinion. And do you have an
 3 opinion as a policy and gun firearms researcher
 4 about whether someone like Devin Kelley could have
 5 obtained firearms through use of a straw purchaser?
 6 A Is it possible? Yes, it's possible.
 7 Q Is it likely?
 8 A It's quite unknown, and here's why I say
 9 that. We almost exclusively know how individuals,
 10 prohibited individuals, get guns. We know that
 11 principally through surveys, but what we don't know
 12 is how many prohibited people did not get guns and
 13 why. That's really the question at hand here.
 14 While we see that straw purchase is,
 15 is a way that prohibited people sometimes acquire
 16 firearms, what we don't know is how many times they
 17 were unable to do that for any number of reasons. I
 18 just, I'm a co-author and I study, published, since
 19 2017 or 2018, looking at, in essence, the
 20 underground gun market in Baltimore City and
 21 following some hand purchaser licensing and some
 22 other measures to try to prevent, including

1 heightened gun dealer oversight. And we ask people
 2 following, following that law was it more difficult
 3 to get people to purchase guns for you, and we had
 4 about 30 percent who said yes.
 5 So, but our study was unusual.
 6 Really studies generally don't ask people, hey, did
 7 you want to get a gun or try to get a gun but
 8 couldn't, and that's sort of a hypothetical here of
 9 if he hadn't been able to easily acquire the gun
 10 from the licensed gun dealer as he did to carry out
 11 this act, might he had done that otherwise. We --
 12 yes, as I said, it's possible, but certain, don't
 13 know.
 14 Q Well, what is your reason for believing
 15 that he would not have tried to get a gun otherwise?
 16 A Well, A, it's a crime. B, he may not have
 17 been successful. I'm not sure.
 18 Q I'm going to mark another exhibit. This
 19 will be Exhibit 7.
 20 (Whereupon, Exhibit No. 7 was marked for
 21 identification.)
 22

1 BY MR. FURMAN:
 2 Q Do you see that, Dr. Webster? The
 3 statement of Danielle Kelley?
 4 A Yes.
 5 Q In the lower right-hand corner is
 6 SSS-1035. Is this a document you've seen before?
 7 A It is.
 8 Q Okay. This is on our list from
 9 plaintiffs' counsel, but I'll take your word for it.
 10 But have you ever seen it before? So this document
 11 talks about, or this is the sworn testimony of
 12 Mr. Kelley's widow, correct?
 13 A Yeah.
 14 Q And it discusses him going to the Dick's
 15 Sporting Goods attempting to purchase a Ruger
 16 assault rifle? That's about that paragraph four.
 17 Do you see that?
 18 A I do.
 19 Q And the last sentence or second to last
 20 says, Devin was prevented from purchasing a gun at
 21 Dick's Sporting Goods that day. Do you see that?
 22 A Yeah.

1 Q And then paragraph five talks about what
2 we all know, in April 2016, the Ruger AR-556 was
3 purchased in Texas at an Academy Sporting Goods. Do
4 you see that?

5 A Yes.

6 Q So according to sworn testimony of
7 Danielle Kelley, Devin Kelley was, in fact, denied
8 for purchase of a gun, correct?

9 A Yes, he was.

10 Q And he still went on to purchase the same
11 weapon he had tried to purchase otherwise, right?

12 A That's correct.

13 Q And if he had been denied as an FFL, he
14 would have gone and found another avenue to find the
15 same weapon, right?

16 MR. JACOB: Objection, form.

17 A The only thing we know is what he did with
18 FFLs. So we know initially he was denied and he did
19 not get a gun. We know that he tried it on a
20 different occasion, was able to purchase the gun in
21 question and committed a horrendous act of mass
22 violence. That's what we know.

1 Q Right. It would be your, certainly your
2 firearms policy, regulation, researcher and --
3 right?

4 A Yeah, correct.

5 Q You know about all the avenues that
6 prohibited persons can obtain firearms, right?

7 A Sure.

8 Q And there are a lot of avenues, would you
9 agree?

10 A Yeah.

11 Q And there's typically a lot of avenues for
12 people who do a lot of research on the Internet on
13 guns, right?

14 A Sure. There's also a lot of reasons why
15 people don't get guns. Again, as I was saying,
16 that's less well studied but what, what I've learned
17 is that there's great uncertainties in, it's called
18 unregulated market, where you're buying used guns
19 from any, you know, various kind of characters, and
20 it requires a trusted supplier and a trusted
21 product.

22 It appears to me that Mr. Kelley had

1 a strong preference for particular type of firearm,
2 particularly if he was going to carry out not any
3 act of gun violence, but an act in which he was
4 helping to kill a lot of people.

5 Q All right. I'm going to mark an exhibit.
6 I guess we're up to 8.

7 (Whereupon, Exhibit No. 8 was marked for
8 identification.)

9 BY MR. FURMAN:

10 Q Do you see that document, sir?

11 A Yeah.

12 Q It's called Point, Click, Fire. Is
13 that -- have you seen this pamphlet before?

14 A Yes.

15 Q It says, investigation, I believe, of
16 online gun sales. Do you see that?

17 A Yes.

18 Q And I'm here on page five of the PDF.
19 Says, 62 percent of private gun sellers agreed
20 they'd sell a firearm to a buyer who said he
21 probably couldn't pass a background check. Do you
22 see that?

1 A Yeah.

2 Q And 40 percent of guns are sold through
3 private sellers. Do you see that?

4 A Yes.

5 Q Do you have any reason to doubt those
6 numbers?

7 A Well, the, the one on right, the
8 40 percent, is based on survey data going back to
9 the 1990s. So the more updated research estimates
10 that at 22 percent.

11 Q Right. And the 22 percent, that's the
12 Miller study you're referring to?

13 A Yes.

14 Q I'm looking here at the text. It says,
15 sells conducted over the Internet has been connected
16 to mass shootings at Virginia Tech and Northern
17 Illinois University, murder of police officers,
18 illegal sells to minors, et cetera. Do you see
19 that?

20 A Yes.

21 Q And then on page five, Web sites people
22 can purchase guns. Are you familiar with them?

1 A Yes.

2 Q And as long as it's a private sale, privy

3 to purchaser is obtained, weapons through these

4 Web sites, not infrequently. Would you agree?

5 MR. JACOB: Objection, form.

6 A Difficult thing to study, but I don't

7 doubt that many people, prohibited people have

8 acquired firearms, clearly connecting individuals

9 through these different Internet sites.

10 BY MR. FURMAN:

11 Q And the Baltimore study you're referring

12 to about needing a trusted seller, that was a survey

13 of persons who were mostly gang members, correct?

14 A No. This was people on parole and

15 probation in Baltimore City. Some may have been

16 gang members, we don't know, but it was an anonymous

17 survey of people on parole, parole and probation in

18 Baltimore City.

19 Q So you didn't measure how many of them

20 were gang members?

21 A No.

22 Q And when you said people have concerns

1 about obtaining a weapon through a trusted source,

2 it seems from the data here private sellers are

3 often very willing to sell to prohibited persons

4 even knowing that they might be prohibited. Would

5 you agree?

6 MR. JACOB: Objection, form.

7 A The data from the study indicated a

8 willingness of many people to, to make that

9 transaction. What's relevant in the case that this

10 litigation's about is what Mr. Kelley's comfort and

11 preference were and I believe he had some experience

12 with Craigslist that didn't work out particularly

13 well. He seemed to be more confident that he could

14 get the gun he wanted from an FFL.

15 BY MR. FURMAN:

16 Q You mentioned crime being a potential

17 reason that, or the fact that acquiring a gun or

18 acquiring a gun at an FFL might have been criminal

19 as a possible deterrent for Mr. Kelley. Mr. Kelley

20 certainly committed many criminal acts, would you

21 agree?

22 A Yeah.

1 Q And do you think that threat of

2 prosecution for lying on a Form 4473 would have

3 deterred him from purchasing a weapon or he would

4 have been deterred from purchasing a weapon through

5 a private sale because he might be prosecuted for

6 owning that weapon?

7 MR. JACOB: Form.

8 A I think it's certainly possible,

9 particularly given the time, the period in which he

10 acquired the firearms.

11 So generally speaking, I mean, this

12 sort of line of argument you share all the time,

13 criminals don't obey laws so why would they ever be

14 deterred from permitting a crime because they're

15 criminals.

16 It's kind a circular kind of argument

17 but there's also plenty of research evidence that

18 people who engage in criminal acts all the time do

19 things to avoid being arrested and prosecuted and

20 going to jail, they don't really like being

21 arrested, prosecuted and going to jail.

22 So, yeah, I think it's a very

1 reasonable thing to, to assume that Mr. Kelley could

2 have been deterred from engaging in a straw purchase

3 because he did not want to be arrested, prosecuted

4 and go to federal prison.

5 Q Well, he certainly wasn't deterred by

6 dying, was he?

7 A Well, that was at the end of the game

8 here. Yeah, so he was, he was in a suicidal place

9 at that time. He appeared to be, anyway.

10 Q Right. And certainly the mass murder

11 committed, that was certainly a criminal act, would

12 you agree?

13 A Of course.

14 Q But you think that prosecution for

15 possession of a gun would have deterred him from --

16 isn't lying on a Form 4473 a crime?

17 A Yeah, it is.

18 Q And he was never deterred from that, was

19 he?

20 A Not in instances that we know about here.

21 Q I skipped ahead to a document. It looks

22 like this is page nine of 24 of the PDF, and I have

1 it where it has AK-47. Do you see that?

2 A Yeah.

3 Q And AK-47, that's an assault rifle?

4 A Um-hum, yeah.

5 Q And it appears the shooter here was able

6 to obtain one online?

7 A Yeah.

8 Q And do you have any reason to doubt that

9 Mr. Kelley would have been unable to obtain an AR-15

10 assault rifle through the seller through a means

11 other than an FFL?

12 MR. JACOB: Form, asked and answered.

13 A Yeah. We sort of covered this ground. So

14 is it possible? Yeah, yeah. As I said before, it

15 is possible. But we simply know from the available

16 record that Mr. Kelley did not do that. And again,

17 there's a whole host of reasons why people don't

18 want to do those exchanges.

19 If you think about it, you're meeting

20 a stranger, you're bringing hundreds of dollars to

21 meet a stranger with an assault rifle, okay? That,

22 that could be a sort of intimidating interaction,

1 could be that Mr. Kelley, but it was far safer for

2 him to walk into a gun shop and pick out a gun

3 himself.

4 MR. FURMAN: I'll mark an exhibit. I

5 think we're up to 9.

6 (Whereupon, Exhibit No. 9 was marked for

7 identification.)

8 BY MR. FURMAN:

9 Q You see the picture of the shotgun,

10 Dr. Webster?

11 A Yeah.

12 Q And have you seen this photo before?

13 A Yes.

14 Q And this was taken from the iCloud account

15 of Devin Kelley that was obtained by the Texas

16 rangers in their investigation of him.

17 Dr. Webster, are you aware of whether

18 this weapon was purchased as an FFL?

19 A I think that may have been a private

20 transaction. I don't honestly recall now how he got

21 that shotgun.

22 Q You're certainly able to get it, correct?

1 A Yes, sure.

2 Q And certainly an evil person could

3 certainly use a shotgun to injure large amounts of

4 people, right?

5 A Yeah. If you look at the mass shooting

6 with the biggest casualties, you rarely see shotguns

7 involved. Shotguns typically are things that are

8 used in incidents with fewer cases. So I suspect

9 not something particularly unusual among mass

10 shooters is that they choose a semiautomatic assault

11 rifle, it's built and designed to carry out acts of

12 mass violence.

13 Q But assuming you're right and that this,

14 in fact, was acquired by a private sell, then that

15 would show that Devin Kelley was willing to enter

16 into those type of transactions, right?

17 MR. JACOB: Objection, form.

18 A It shows that he was willing to do that

19 for this particular shotgun.

20 BY MR. FURMAN:

21 Q And why would he do something different

22 with respect to an assault rifle?

1 A Well, again, it could be that, that stakes

2 are higher for him at that particular time and, you

3 know, undertaking an act of mass violence is a

4 pretty serious thing to do if that's your intent.

5 You know, you don't want to get a gun that's

6 defective, so I suspect that he wanted a gun that he

7 could trust, wasn't going to not perform as he

8 wanted it to.

9 Q And are there any studies you're aware of

10 on the quality of weapons obtained through private

11 sells versus the quality of weapons obtained at an

12 FFL?

13 A No.

14 Q We'll mark this as Exhibit 10.

15 (Whereupon, Exhibit No. 10 was marked for

16 identification.)

17 BY MR. FURMAN:

18 Q Can you see the document, Dr. Webster? It

19 says, Leads Online?

20 A Yes.

21 Q At the very top here you see there's a

22 sell of a 9-millimeter pistol from Mr. Kelley to a

1 online just as well as you can -- actually, easier
 2 than you can search for private sellers.
 3 So, so he could have been searching
 4 for, you know, which license dealers had the best
 5 deals on assault rifles.
 6 BY MR. FURMAN:
 7 Q But it's not hard to find a Web site like
 8 armslist.com, is it?
 9 A No.
 10 MR. JACOB: Objection, form.
 11 BY MR. FURMAN:
 12 Q And if right now during the deposition you
 13 or I wanted to go and, go online and search for
 14 guns, we could probably arrange for a sell pretty
 15 quickly, would you agree?
 16 MR. JACOB: Objection, form.
 17 A Yeah, I don't doubt that, we probably
 18 could. I haven't -- just to be clear -- I'm sorry.
 19 Say again?
 20 BY MR. FURMAN:
 21 Q I'm sorry. Finish the last part.
 22 A I just said, just to be clear, I haven't

1 done that. Not something I want to do. And I
 2 suspect -- but that's actually the point, it's not
 3 that it's about Danielle (sic) Webster and what he
 4 would do, but what I'm saying is that there's a
 5 number of people who might, yeah, sure, they know
 6 can you go online and buy a firearm from a stranger,
 7 but how many people actually do it?
 8 There's a huge gap between knowing
 9 that that is possible and actually doing it for the
 10 reasons I just said before. How many people want to
 11 meet a stranger carrying an assault rifle when
 12 you're bringing hundreds of dollars of cash?
 13 Q Well, there are ways to limit the risk,
 14 right?
 15 A I'm sure there are. But again, my point
 16 is that many people will very logically view that as
 17 a risky kind of thing to do for any number of
 18 reasons, including personal safety. Including that
 19 maybe that gun was previously used in a crime.
 20 Including that maybe that gun doesn't work as well
 21 as you might hope it does.
 22 So there's a host of reasons why.

1 Even if you can -- and you can often get lower
 2 prices from a private seller than you can a licensed
 3 gun dealer, yet people routinely choose a licensed
 4 gun dealer over a private seller and their reason is
 5 they're more confident in the safety and quality of
 6 the firearm when they're dealing with a licensed
 7 dealer than they are with some stranger who they
 8 connected with on armslist.com.
 9 Q And was Devin Kelley -- you referenced
 10 about risk. Is Devin Kelley the type of person who
 11 was deterred by risk?
 12 A He didn't seem to really love to go to
 13 jail. He didn't really love to be confined in the
 14 hospital for mental treatment. So I'm going to go
 15 out on a limb and say he, he wanted to avoid risk of
 16 going to jail and he probably wanted to go to avoid
 17 the risk of being shot.
 18 It seems to me that he was -- his
 19 behavior showed that those are things that he cared
 20 about. He didn't want to be confined and doubtful
 21 that he wanted to be shot.
 22 Q Dr. Webster, you can go to jail for

1 sexually assaulting someone, correct?
 2 A Yes.
 3 Q And Devin Kelley did that multiple times,
 4 correct?
 5 A He did. A lot of people get away with
 6 that, particularly with acquaintances when you're a
 7 teenager.
 8 Q Carrying a concealed weapon without a
 9 permit is illegal in many states, right?
 10 A Sure.
 11 Q And Devin Kelley carried a concealed
 12 weapon in Texas without a permit, right?
 13 A Actually, I don't know if he carried,
 14 concealed. The information that I read in the
 15 transcripts and such indicated that he would have
 16 one on his hip. It wasn't always clear to me
 17 that -- I actually inferred that it was often open
 18 carry as opposed to conceal carry.
 19 Q And his even owning firearms was illegal
 20 under the Gun Control Act, correct?
 21 A Yes.
 22 Q But that didn't deter his purchases of

1 those firearms and FFLs, right?

2 A No.

3 Q Owning body armor is a felony in Texas

4 correct, if you're a felon?

5 A I don't know that law specifically, but

6 I'll take your word for it.

7 Q Texas Penal Code Section 46.041A is a code

8 I'm referring to. And Devin Kelley acquired body

9 armor online, correct?

10 A Yeah.

11 Q And he wasn't deterred in making that

12 transaction, was he?

13 A Apparently not.

14 Q Devin Kelley abused animals, correct?

15 A That's what the evidence suggests, yeah.

16 Q And he got caught in Colorado, right?

17 A Yes.

18 Q And abuse of animals is potentially,

19 depending on severity, a felony, right?

20 MR. JACOB: Objection, form. Yeah,

21 depending on the severity.

22

1 BY MR. FURMAN:

2 Q Devin Kelley used, used illegal drugs,

3 correct?

4 A That's my understanding.

5 Q And Devin Kelley offered money to women

6 for sexual favors; is that right?

7 A I believe so.

8 Q And he also had -- you point out in your

9 report, he had antisocial personality disorder; is

10 that right?

11 A That's what he was diagnosed with, I

12 believe.

13 Q People with antisocial personality

14 disorder aren't too concerned about risk, are they?

15 A I don't think I would make that

16 conclusion. They do have a variety of antisocial

17 and that isn't a violent thing, but they also try to

18 avoid consequences for those practices or behaviors.

19 So don't just act in ways in which they have no care

20 about the potential of being caught and facing

21 consequences necessarily.

22 Q We just talked about a number of

1 occurrences or law breaking behaviors, several of

2 which at least could have potentially put Devin

3 Kelley in jail, correct?

4 A Yeah.

5 Q And is it still your opinion that Devin

6 Kelley would have been deterred by denial at an FFL

7 by seeking money or seeking firearms elsewhere due

8 to risk of going to jail? Is that right?

9 MR. JACOB: Form.

10 A What I was stating is that there are a

11 variety of risks connected to, to these things, one

12 of which is incarceration.

13 BY MR. FURMAN:

14 Q Right.

15 MR. JACOB: Austin, I don't know if you're

16 near a stopping point, but we've been going

17 about an hour and a half. It might be, if you

18 are, maybe a ten minute break.

19 MR. FURMAN: I'll give you that. I was

20 thinking the same thing. So let's go off the

21 record, please.

22 THE VIDEOGRAPHER: We are going off video

1 record at 2:59 p.m.

2 (Whereupon, there was a break from

3 2:59 p.m. until 3:12 p.m.)

4 THE VIDEOGRAPHER: We are back on video

5 record at 3:12 p.m.

6 BY MR. FURMAN:

7 Q Thank you. Dr. Webster, we've been

8 talking about some of the behaviors and risk factors

9 that you recall that the Air Force may or should

10 have been aware of with respect to Devin Kelley for

11 future violence. And are you aware that there was

12 a, although there was a plea agreement with respect

13 to the charges, that there was a sentencing trial

14 with respect to Mr. Kelley?

15 A Yes.

16 Q And that was -- and a jury of his peers

17 were charged with determining the severity or the

18 length of his sentence; is that right?

19 A Yes.

20 Q And under the felony assault of his son

21 and the misdemeanor itself of his wife, he could

22 have been sentenced to five and a half years in

1 suicidal, suicidality.
 2 Q Well, I mean, it's documented now, almost
 3 by definition, if you're going to commit a mass
 4 shooting, don't you have to be prepared to die?
 5 It's a pretty good likelihood, wouldn't you agree?
 6 A Yeah, I would.
 7 Q And the study you cited that's related to
 8 intimate partner violence, and again, Devin Kelley
 9 didn't kill his intimate partner and then kill
 10 himself, he killed church members that were not his
 11 wife, right?
 12 MR. JACOB: Objection, form. Asked and
 13 answered.
 14 A Right.
 15 BY MR. FURMAN:
 16 Q Right. So how is the research related to
 17 someone who kills their spouse and then kill
 18 themselves, how is that related to a mass shooting
 19 of people other than his spouse? That's where I'm,
 20 I'm not seeing the connection.
 21 A Well, it's something I discussed earlier.
 22 I believe his motivation was relevant to his history

1 of domestic violence and his set of motivations.
 2 Q All right. Is there any empirical
 3 research on motivation related to domestic violence
 4 concerning future violence?
 5 A Not that I can think of.
 6 Q If you can turn back to your report, and
 7 this is page nine. This is beyond research specific
 8 to domestic violence. There is evidence that access
 9 to firearms by those with a history of violence is
 10 associated with increased risk for future violence
 11 by those who acquire firearms legally. Do you see
 12 that?
 13 A Yeah.
 14 Q And we talked about the Wintemute study
 15 earlier, so, but before we move on, when you say
 16 acquire firearms legally, what do you mean by that?
 17 A Well, in this particular study these are
 18 individuals who went to a licensed gun shop and
 19 acquired guns, they were not prohibited, at the time
 20 that they purchased their guns.
 21 Q Right. Devin Kelley was prohibited,
 22 right?

1 A That's correct.
 2 Q So his purchasing a gun would have been
 3 illegal, right?
 4 A Yeah. Actually, I think that's precisely
 5 the point, that he was not denied because the
 6 records were not in there. When, when you do a
 7 study in which you look at people who go to licensed
 8 gun shops in the manner quite similar to what
 9 Mr. Kelley did and they were denied, their rate of
 10 committing violent acts, including violent acts,
 11 violent crimes with firearms was significantly
 12 lower.
 13 Q And you're referring to the additional
 14 Wintemute studies cited in your report; is that
 15 right?
 16 A That's correct. Also separate research
 17 that, also that I cite, led by Dr. Jeffrey Swanson
 18 and Duke University, looking very specifically at
 19 individual cases of who was and was not prohibited
 20 and the records in the background check system.
 21 And Connecticut, for example, greatly
 22 increased its submission of records for denying

1 firearm acquisition for cases relevant to mental
 2 health denials, that the individuals who were
 3 affected by that, in terms of they were illegal,
 4 their rates for violent crime were basically cut in
 5 half.
 6 Q Since you brought that up, I'm going to
 7 mark exhibit -- I think we're up to 12.
 8 (Whereupon, Exhibit No. 12 was marked for
 9 identification.)
 10 BY MR. FURMAN:
 11 Q Reducing Gun Violence in America. Is that
 12 your book?
 13 A It is.
 14 Q And this is the Mr. Swanson you were
 15 talking about?
 16 A Yes.
 17 Q Does this book chapter refer to some of
 18 the, the research you're talking about?
 19 A Yes.
 20 Q Is this who you're referring to, the
 21 subgroup or the corresponding decline was greater,
 22 from 6.7 before NICS to 3.2 percent after NICS?

1 licensed gun dealer, however, that does not mean
2 that, that background checks are not a deterrent for
3 some individuals being able to carry out acts of gun
4 violence.

5 Q On the left-hand side are some of, what
6 you're referring to as far as comprehensive
7 background checks. Reading here, a cluster of
8 population level studies have yielded findings of no
9 effect for comprehensive background check policies.
10 Do you see that?

11 A Yes.

12 Q And here it says, or private party sells
13 more frequently involve background checks in states
14 where checks are required, 74 percent that are in
15 states where they are not. But note that in the
16 first group there is 26 percent noncompliance of the
17 requirement. Do you see that?

18 A Yeah.

19 Q Does that sound right to you, the numbers?

20 A It's what the study reflects, yeah.

21 Q I'm looking over here where it says
22 noncompliance by sellers and buyers, it talks about

1 the 26 percent. A noncompliance of this magnitude
2 preserves a sizeable pathway for anonymous,
3 undocumented transfers of firearms. Do you agree
4 with that statement?

5 A Yeah.

6 Q And then in a study of private-party sells
7 at gun shows, undercover investigators found that
8 nearly two-thirds of sellers proceeded with a sale
9 despite having reasonable cause to believe they were
10 selling to a prohibited person. Do you see that?

11 A Yeah.

12 Q Any reason to dispute that?

13 A No.

14 Q A study of would purchasers at online
15 firearms, brokerages found that, at a minimum, one
16 in thirty were prohibited persons. Any reasons to
17 dispute that?

18 A No.

19 Q And last, the undercover investigators
20 found that 62 percent of online firearms sellers
21 were willing to sell to buyers who had said they
22 would probably fail background checks. Do you agree

1 with that?

2 A Yeah, I did. That's what the study found.
3 I mean --

4 Q And research also found that retailers are
5 often willing to sell to a straw, potential straw
6 purchaser, correct?

7 A Yeah. I would say a small subset.

8 Q We'll mark this Exhibit 14.

9 (Whereupon, Exhibit No. 14 was marked for
10 identification.)

11 BY MR. FURMAN:

12 Q Dr. Webster, do you see the document in
13 front of you?

14 A I do.

15 Q These authors, are these associates of
16 yours?

17 A Vittes once worked for me.

18 Q And this was a study of 120 handgun
19 dealers with a person calling, posing as a potential
20 straw purchaser; is that right?

21 A Um-hum, yes.

22 Q And the results in the summary here it

1 says most dealers, most dealers are willing to sell
2 a handgun regardless of the end user. Do you see
3 that?

4 A I do. The fact that they indicated on the
5 phone in openness is a separate question of whether
6 someone shows up to do it, what they would do.

7 Q Well, we just talked about some stated gun
8 shows where people were actually selling to people
9 who they thought were prohibited, right?

10 A Yeah.

11 Q So people do actually sell to, you know,
12 sell firearms in private sells even when they have
13 good reason to believe that the person is
14 prohibited. Would you agree with that?

15 A Yeah, but my, my comment just a minute ago
16 was simply in reference to the study that we're
17 looking at right now that I want to acknowledge some
18 limitation of how they aren't measuring a
19 willingness to sell. They're measuring willingness
20 to sell based upon a conversation on the phone which
21 is very different from someone who's before them
22 where they have to go through the procedures with

1 4473s and so on, or whether they would make that
2 transaction or not.

3 Q Well, so is it possible that some of the
4 dealers who were unwilling to sell on the phone in
5 person might have been also willing to sell to a
6 straw purchaser, right?

7 A Yeah, we don't know.

8 Q Okay. Dr. Webster, we've been talking
9 about background checks and particularly why
10 comprehensive background checks might not work.
11 With respect to whether a background check works
12 with respect to a particular person, there are a
13 number of factors. Would you agree?

14 MR. JACOB: Objection, form.

15 A Can you do a clearer -- I'm not sure, I'm
16 not sure how to answer question.

17 BY MR. FURMAN:

18 Q Right. So I'm looking at whether a
19 particular individual who is prohibited from
20 purchasing, whether that particular person will be
21 able to acquire a weapon for firearm not
22 withstanding a background check or how effective the

1 background check will be, that depends on a variety
2 of factors, would you agree?

3 A Yeah.

4 Q We talked about several, you know, the
5 availability of firearms, you know, the straining of
6 regulations in a particular state, and those are
7 both relevant, correct?

8 A Yeah, they're relevant. I think what's
9 most relevant is -- and it's what we learned in a
10 number of studies, pretty consistently learned, is
11 that people have a very strong preference for
12 purchasing firearms, acquiring firearms from people
13 they know and trust and that they pretty rarely
14 engage in those transactions with a stranger.

15 So if you live in Texas, for example,
16 and there's a lot of people with guns but you don't
17 know any who would actually, you trust them or they
18 trust you, doesn't mean that guns are widely
19 available. So what's most relevant -- and Phil
20 Cook, a famous economist from Duke University who
21 studied gun violence and gun markets is, you know,
22 there are times and places where there are a lot of

1 guns but the limiting factor is a trusted supplier,
2 and I think that's relevant in this case with
3 Mr. Kelley.

4 Mr. Kelley seemed to not have friends
5 and family who were willing, who he trusted and who
6 trusted him, with a firearm transaction and that
7 exchanges with just strangers who might be in the
8 area or something were quite uncertain as well.

9 So in this particular case, I think,
10 you know, his ability to be able to get a gun
11 directly from an unlicensed gun seller was, was
12 really quite critical in what happened here.

13 Q Dr. Webster, we talked about Devin
14 Kelley's purchaser of firearms, or not firearms,
15 body armor through online and we talked about that
16 was illegal under the Texas code and as an online
17 transaction. Is there any evidence you're aware of
18 that Devin Kelley had any particular trust in this
19 person selling body armor online?

20 A I don't actually know that he got it from
21 an individual he just met up with. I don't know
22 exactly how he got that body armor. I don't know

1 that it was, hey, meet me at the parking lot at the
2 Wal-Mart or whatever. I don't know how he --
3 whether this is something that showed up on his door
4 step in an Amazon box or how, how it got there. I
5 don't really recall that.

6 Q All right. Certainly there are a large
7 number of transactions for firearms that involve the
8 Internet, correct?

9 A Yeah, as a place to connect with potential
10 sellers. So, yeah, that a mechanism by which people
11 do make connections.

12 Q And you're indicating, Dr. Webster, is
13 that all those persons who purchase firearms through
14 the Internet built some sort of rapport or
15 relationship with the seller before they're willing
16 to engage in the transaction?

17 A I honestly don't know, but it's important
18 to note that actually included in the study we were
19 just talking about a moment ago that Matthew Miller
20 led, that the vast majority of people acquire guns
21 in a manner that do involve a background check
22 commonly through an FFL.

1 A That's not what I was saying. What I was
 2 saying is not to get a friend to buy a gun for you
 3 but a friend who had a gun that you want to buy, buy
 4 from. So it's, it's very common that people buy
 5 guns from people they know. Sometimes it's to what
 6 we were discussing before, is a straw sell, in which
 7 the prohibitive person says, hey, will you go to
 8 Bob's Gun Shop and go in and buy me, you know, this
 9 AR-15 or whatever, but -- or some a more common
 10 scenario is, you know, we also search on networks
 11 and what we, what we know is that people buy and
 12 sell from through those social networks and that's
 13 particularly true when it comes to prohibited people
 14 acquiring firearms.

15 So the biggest category of, source of
 16 guns for prohibited people from the national surveys
 17 are people incarcerated in State prisons for
 18 committing violent crime is through a friend or a
 19 family member.

20 So it didn't appear from what, the
 21 information available, that Mr., that Devin Kelley
 22 had someone, a friend or family, that he trusted or

1 they trusted him, in which to get a firearm.
 2 So I think there's a number of
 3 factors that make me conclude that it's quite
 4 probable that he would not have been able to carry
 5 out the act of violence that he did had he not had
 6 the door open for him through a licensed dealer.

7 Q I'm not quite sure I understand your
 8 logic, Dr. Webster. I mean, if I can go to the car
 9 store and buy a new car at a car dealership, I can
 10 buy any car I want and then get it, but if I have to
 11 buy a car from a friend, then obviously I'm limited
 12 to the cars that my friend has.

13 So if I need a car to drive around
 14 and I can't buy one from a dealer, I got to buy one
 15 from a friend, but if I can buy one from a dealer,
 16 all else being equal, why wouldn't I? Doesn't the
 17 same apply here?

18 I mean, Devin Kelley is going to go
 19 to a, you know, FFL to buy a firearm and he gets the
 20 selection he wants and, yeah, I could buy from a
 21 friend but if he's not, you know, if the background
 22 check isn't prohibiting him, why would he limit

1 himself to buy something else when he can buy
 2 whatever he wants from an FFL?

3 MR. JACOB: Objection, speculation.

4 A Well, I'll just respond. Guns and cars
 5 are two different products and you might find, if
 6 you're a prohibited person, you find somebody will
 7 sell you a lawn mower, you might find somebody who
 8 will sell you a car, you might find somebody who
 9 will sell you a piece of furniture.

10 But if you say, hey, can I buy your
 11 gun to this friend, particularly if they know you,
 12 they may know, hey, you shouldn't buy a gun, B,
 13 you're prohibited, I'm not going to sell you my gun.

14 So, so, yeah, it's a marketplace that
 15 is built upon trust. There are risks and laws in
 16 place as it relates firearms that are unique among
 17 products. And we know from studying this general
 18 phenomenon of criminal access to firearms that it's,
 19 it's highly dependent upon social networks who --
 20 where there are trusted suppliers and sellers.

21 And again, it's one thing if you're,
 22 if you're in a gang and there are individuals who,

1 who share guns within a gang, but this, Mr. Kelley,
 2 is different -- individual. He did not think to
 3 have a social network to speak of and certainly not
 4 one that saw him as trustworthy, so yeah.

5 Q All right. We were discussing the trusted
 6 factors and those sorts of things. Is that anywhere
 7 in your report?

8 A To make it easy, I don't see anywhere in
 9 your report where you discuss acquiring firearms at
 10 a -- through a means other than through an FFL.

11 MR. JACOB: Objection, form.

12 A Yeah, it's not in here, but I'm telling
 13 you that's my expert opinion. So this is what I
 14 study. I'm happy to write something summarizing it
 15 if you'd like, but that's, that's my opinion based
 16 upon the data that I know.

17 BY MR. FURMAN:

18 Q And given the prevalence of the firearms
 19 and the limited regulations of firearms in Texas, do
 20 you think it's a critical omission that you did not
 21 discuss at all the ability of the shooter to get
 22 firearms elsewhere in Texas, other than an FFL?

1 That's the whole point of this case, is that he had
2 a trigger to pull, and particularly a trigger to a
3 firearm that facilitated mass violence because of
4 the failure to put his records into the FBI's NICS
5 system where he should have been denied from being
6 able to acquire the firearm that he used to commit
7 mass murder.

8 BY MR. FURMAN:

9 Q Earlier we also talked about how -- we
10 talked about the language used to increase the risk
11 of harm and I guess my question is increase a risk
12 of harm over what?

13 A I don't know how to answer that question
14 other than, no, I've been asking -- answering more
15 or less the same question over and over. So this is
16 a man who had a history of violence, including a
17 history of gun violence. It's not as though there
18 would have been no risks that he would have done
19 anything to harm someone had the Air Force and the
20 Department of Defense done what they were supposed
21 to do.

22 But we only have the facts available

1 in this particular case, and in this particular case
2 we have a man who, who was able to acquire serious
3 weaponry to carry out this act who didn't have the
4 obvious means to, that were preferable to him, to be
5 able to, to carry out his intentions.

6 Q And the Air Force's obligation to submit
7 the fingerprints, that was under the Brady Act,
8 right?

9 MR. JACOB: Objection, form.

10 A I don't know if it's under the Brady Act
11 or a different act, I don't know, but I know that
12 they're federally -- federal laws require that
13 they're supposed to submit these records.

14 BY MR. FURMAN:

15 Q And if there were no federal law requiring
16 them to submit the records, then there would have
17 been no increased risk of harm if those records were
18 not submitted, right?

19 MR. JACOB: Objection, form.

20 A I don't care if the law required it or
21 not. Their failure to do so enabled this man to
22 acquire the firearms to use to commit mass murder.

1 So that is what is relevant. I mean, I think it's
2 also relevant that they didn't follow federal law.
3 But independent of what the law is, there's an
4 obligation for public safety to submit records for
5 individuals who are legally prohibited to have a
6 gun.

7 BY MR. FURMAN:

8 Q Okay. I'd like to move on. Dr. Webster,
9 in your report you cite research that supports the
10 background checks to defer future violence. I'm
11 talking about the Wintemute study. Does that sound
12 familiar?

13 A Yes, yes.

14 Q Are there any other studies that you -- I
15 know there's the population based studies that look
16 at background checks. Obviously those don't have
17 control groups, or if they do, they're synthetic
18 controls, but are there any other studies that
19 compare background checks, to do background checks
20 in the way Wintemute does using the naturally
21 occurring control groups?

22 MR. JACOB: Objection, form.

1 A No, certainly not in the same manner in
2 some of the studies that our teams have done with,
3 with studying comprehensive background check law
4 requirements. There are studies that are cited in
5 Dr. Wintemute's 2019 study that shows that the more
6 records that states examined in their background
7 check system, that there's a correlation with fewer
8 firearm homicides. So I think that is relevant to
9 this case as well.

10 BY MR. FURMAN:

11 Q There's no study that you're aware of on
12 whether individuals who are denied purchase at an
13 FFL go on to acquire firearm from other means?

14 A I'm thinking for a moment here. Nothing I
15 can think of at the moment.

16 Q All right. Part of the problem with
17 having a study like that is you need a way for the
18 study to trace weapons or find weapons that people
19 who are acquiring weapons for a private sale,
20 there's no record, right?

21 A That's correct.

22 Q So I suppose you do a survey of people who

1 Q All right. I'm getting a -- hopefully we
2 will stay connected. If we do we'll just --
3 MR. JACOB: Did he disconnect?
4 THE VIDEOGRAPHER: I believe so. We'll go
5 off the record while we wait for Mr. Furman.
6 MR. JACOB: Okay.
7 THE VIDEOGRAPHER: Okay. We are going off
8 video record at 5:44 p.m.
9 (Whereupon, Exhibit No. 17 was marked for
10 identification.)
11 (Whereupon, there was a break from
12 5:44 p.m. until 6:01 p.m.)
13 THE VIDEOGRAPHER: We are back on video
14 record at 6:01 p.m.
15 BY MR. FURMAN:
16 Q Thank you, Dr. Webster. Can you hear me
17 okay?
18 A I can.
19 Q Thank you. I marked an exhibit, so I'll
20 try to bring the same exhibit using share screen on
21 this computer. Let's see if that works. All right.
22 I hit share screen. Did that work?

1 A Yes.
2 Q Okay. Perfect. And this is Exhibit 17.
3 And we were discussing this before we got cut off.
4 This is one of the studies you relied upon in your
5 --
6 A Yes.
7 Q -- in your report?
8 A Yes.
9 Q Okay. And I think you explain some of the
10 details of this study in your report, so I don't
11 think we need to get into them this second, but I'm
12 looking here at the introduction, and Wintemute
13 makes the statement, denial of handgun purchases by
14 felons has associated reduction in their risk of
15 committing new gun or violent crimes that are
16 approximately 20 percent of the 25 percent. Do you
17 see that?
18 A Yes.
19 Q And you're referring to the other study
20 that you said in your report, correct?
21 A Yes.
22 Q Okay. We'll talk about that one in a

1 minute.
2 A Okay.
3 Q All right. I'm looking, this is page 1025
4 of the study, that says, it's referring to criminal
5 record data, and it says, because criminal records
6 data were not sufficiently specific, we are unable
7 to categorize crimes systematically involving guns,
8 violence, both or neither. We were therefore unable
9 to study the specific effects of California's denial
10 policy on risk of arrests for violent crimes.
11 So basically what Wintemute is saying
12 that whether or not this background check had a
13 section deterring violence, we can't specifically
14 say so with respect to violent gun crimes, correct?
15 MR. JACOB: Objection. Mischaracterizes
16 the evidence.
17 A It's what is clearly stated in the article
18 here. Not all the crimes that they were able to
19 record was it possible to discern whether a gun was
20 involved or not. So principally, as they report,
21 they report crimes that involve violence or guns.
22

1 BY MR. FURMAN:
2 Q Right, but if your objection is to measure
3 gun violence and Wintemute is saying a limitation
4 that you can't do that precisely, correct?
5 MR. JACOB: Objection. Mischaracterizes
6 the testimony. Asked and answered.
7 A Correct.
8 BY MR. FURMAN:
9 Q Sorry, Doctor. What was your answer?
10 MR. JACOB: Same objection.
11 A That's correct. That's correct. He notes
12 the limitation in the data and I acknowledge what,
13 what was noted, what the limitations of data.
14 BY MR. FURMAN:
15 Q Let's go here on page, would be 2735, it's
16 referring, says purchasers were more likely than
17 denied persons to be arrested for a new gun and/or
18 violent crime. Do you see that?
19 A I do.
20 Q And it's referring at the end, it says P.
21 Is that a P significant testing value?
22 A Yes.

1 Q And if he says threshold at .05,048, just
 2 meets in there, right?
 3 A Yes.
 4 Q And if it had been three, a thousands
 5 higher, he would have concluded otherwise, right,
 6 that there was no difference, if the no hypothesis
 7 was true?
 8 A Well, with respect to the statistical
 9 significance test, yes. I'll say the field is moved
 10 from when this study was published so that
 11 statisticians and epidemiologists are not fixated on
 12 a magical threshold of .05, but the, but simply
 13 acknowledging degrees of uncertainty around any
 14 given estimate.
 15 Q Right. And Dr. Webster, there are certain
 16 statistics such as affect sizes that can accurately
 17 characterize or determine the size of affects,
 18 correct?
 19 A Yeah.
 20 Q And did Dr. Wintemute do that here?
 21 A He did in terms of percent change, which
 22 is a pretty clear and understandable way to reflect

1 size of affect.
 2 Q It is, but you have to know whether the,
 3 the differences are real ones versus ones that's an
 4 artifact or the data, correct?
 5 A I don't know what you mean by artifact or
 6 the data.
 7 Q Or I guess a better term might be just
 8 statistically, statistically significant, right?
 9 Just to say it different doesn't mean anything
 10 unless there's a statistically different impact,
 11 right?
 12 MR. JACOB: Objection, form.
 13 A I'm going to say my interpretation of, of
 14 the findings in this data is that the difference
 15 that Dr. Wintemute and his colleagues report here
 16 between those who are able to purchase versus those
 17 denied are important in terms of the size of the
 18 affect as well as the statistical significance.
 19 So in both instances we have the
 20 size, a size affect that is, in my mind, quite
 21 meaningful, and a, a measure of the degree of
 22 certainty of that difference that also indicates

1 something that is, to use your words, unlikely to be
 2 an artifact but simply reflect the true difference
 3 between purchasers, those who are able to purchase
 4 versus those who are able -- those who were denied.
 5 BY MR. FURMAN:
 6 Q Right. On the first page here under
 7 results, you're referring to the 1.29 and supervised
 8 confidence intervals?
 9 A Yes. So that 95 percent confidence
 10 interval for that hazard rate reflects that it could
 11 be anywhere from a 4 percent difference to a
 12 60 percent difference. So the, the best estimate is
 13 a 29 percent higher rate among those who are able to
 14 purchase versus denied.
 15 Q Right. And I -- as one of our witnesses
 16 call it, I hate to make you do public math, but if
 17 it's a 29 percent increase, wouldn't that be the
 18 same as being a 22 percent decrease or less likely
 19 to take 129 over 29?
 20 MR. JACOB: Objection, form.
 21 A 129 over what? I'm sorry, I didn't hear
 22 the last part.

1 BY MR. FURMAN:
 2 Q Sorry, 29 over 129 in order to compete the
 3 percentage reduction versus percentage increase.
 4 MR. JACOB: Objection, form.
 5 A I'm not sure how that's how I would do the
 6 math.
 7 BY MR. FURMAN:
 8 Q Do you have a different number?
 9 A Hold on a second. Yeah, a little more
 10 than a 20, a little more than -- about 22 and a half
 11 percent lower.
 12 Q Okay. Twenty-two, okay. We'll take that
 13 number. So essentially denial in this case due to a
 14 background check led to a 22 percent reduction in
 15 future violence?
 16 A Yes.
 17 Q And this involves those convicted of only
 18 a violent misdemeanor, correct?
 19 A Yes.
 20 Q And Devin Patrick Kelley was also
 21 convicted of a violent felony as well, correct?
 22 A Correct.

1 And Dr. Webster, are these two
2 studies the most relevant for your opinions in this
3 case regarding whether Devin Patrick Kelley would
4 have not committed mass violence had he been denied
5 an FFL?

6 MR. JACOB: Objection, form.

7 A I think the most directly, relevant, I
8 think that the Swanson study, Jeffrey Swanson study
9 that we talked about earlier, while it pertained,
10 the prohibiting conditions pertained to those with
11 mental illness connected prohibitors, it was a
12 direct, very direct study about having more records
13 and more capacity to identify prohibiting conditions
14 and how that affects violent crime, which then
15 showed that it was a pretty large affect of a
16 50 percent reduction connected to the capacity to
17 deny firearms to prohibited people. People, people
18 designated as prohibited based on a level of danger.
19 BY MR. FURMAN:

20 Q But was that with respect to prohibited
21 based off mental health status, correct?

22 A Yeah.

1 disorder, wouldn't that be a, a large, potentially
2 confounding variable?

3 A No. It's simply the reality of, of what
4 those individuals were, were living with. I mean,
5 the reason that they have high risk for committing
6 violence is a combination of their mental illness
7 and that their substance abuse practices and
8 disorders. And, again, it's a very small subset who
9 are prohibited for firearm purchases. And almost
10 always the reason they are prohibited because
11 they've exhibited behavior they have done things
12 that show that they are dangerous and violent,
13 violent towards others or themselves.

14 So this is, this is a group that
15 typically has a history of violent and dangerous
16 behaviors that, in their particular case, have some
17 connection to a history of mental illness and
18 substance abuse. But what is, what is determining
19 their prohibited status, again, it's not like
20 someone came in and they got diagnosed with
21 schizophrenia and they said, okay, you can't have a
22 gun, that's not how it works. You get prohibited

1 MR. JACOB: Objection to the form.

2 A As I was saying earlier, the vast majority
3 of – look, mental illness by itself, not a good
4 predictor. You're prohibited from purchasing
5 firearms connected to the mental illness connection,
6 that typically is violence connected. The thing
7 that gets you involuntarily committed for mental
8 health treatment is because you have threatened or
9 committed acts of violence against someone else or
10 yourself.

11 So typically prohibitions connected
12 to mental health are very directly relevant to
13 capacity and risk for violence.

14 BY MR. FURMAN:

15 Q And in the Swanson study didn't
16 82.5 percent as the individuals also have
17 comorbidity, a substance abuse problem?

18 MR. JACOB: Objection. Asked and
19 answered.

20 BY MR. FURMAN:

21 Q And wouldn't the fact that almost all of
22 the study participants or people studied had such a

1 because you've done something incredibly dangerous
2 and threatening to someone else or yourself.
3 Someone else or yourself, yes.

4 So that is quite relevant to
5 understanding and coming to a conclusion about this
6 case.

7 Q Is there any other research you're aware
8 of showing that filling in gaps in the background
9 check system lead to decreased violence?

10 A Yeah. Dr. Swanson has a very similar
11 study in Florida, or more recent.

12 Q That is again regarding mental health?

13 A Yeah.

14 Q Any of those types of studies with respect
15 to any of the other prohibitors under the Gun
16 Control Act?

17 A Not that I can think of right now.

18 Q Returning for a minute to the Wintemute
19 studies we just talked about, the two studies.
20 Would you agree that the studies show about a
21 25 percent reduction on violence based off denial of
22 the purchase?

1 A Yes.

2 Q FFL? And Doctor, given that these studies

3 only show a 25 percent reduction in risk, how can

4 you in this case conclude that there was a greater

5 than 50 percent likelihood that Devin Patrick Kelley

6 would have been prohibited or prevented, rather,

7 from committing violence?

8 A Based upon the facts in Mr. Kelley's case.

9 And in the case in the Wintemute studies, you're

10 talking about a broad population. Many of those

11 individuals are involved or connected with the

12 social networks involved in criminal activities,

13 gangs and such, that facilitates their capacity to

14 acquire firearms and more generally engage in

15 violent activities. That was not case with Mr.

16 Kelley. Mr. Kelley was not part of the gang.

17 So my conclusion about this case is,

18 is based upon facts presented about Mr. Kelley's

19 history and, and the case relevant to his ability

20 to, to get firearms.

21 Q And Dr. Webster, before, before this case,

22 this litigation, had you ever offered an opinion on

1 whether an individual would have been prevented from

2 committing violence by a background check?

3 MR. JACOB: Objection. Asked and

4 answered.

5 BY MR. FURMAN:

6 Q Sorry. You can answer.

7 A The answer is no.

8 Q And is that something, determining whether

9 an individual would be prohibited by a background

10 check, is that something you do in the course of

11 your work as an epidemiologist?

12 MR. JACOB: Objection, form. Asked and

13 answered.

14 A Yeah, as I stated before, I am, I'm not in

15 a clinical capacity evaluating individuals. I look

16 at it in broad such data to understand violent

17 behavior, role of guns and gun policy.

18 BY MR. FURMAN:

19 Q And that's, Doctor, is it not different

20 from what you are doing in this case?

21 MR. JACOB: Objection, form.

22 A What I'm doing in this case is I'm drawing

1 upon my understanding of gun violence, something

2 I've studied for 30 years, and the facts available

3 in this case.

4 BY MR. FURMAN:

5 Q Dr. Webster, have you heard of ghost guns?

6 A Sure.

7 Q 60 minutes did a special on that. Did you

8 watch that?

9 A I did not watch it. I knew that there was

10 a segment but it's something I'm well aware of.

11 Q Right. And that's essentially where you

12 buy the partially assembled firearm through the mail

13 and then assemble it yourself?

14 A Yep.

15 Q Is that basically right?

16 A Yep.

17 Q And do you have any reason to believe that

18 Devin Kelley would not have been able to acquire one

19 of these ghost gun kits in 2016, 2017, in order to

20 obtain a weapon?

21 MR. JACOB: Objection. Calls for

22 speculation.

1 A They were sold back then. Whether he

2 would have wanted or been inclined to or had the

3 mechanical tools and capacity to but putting

4 together a ghost, a working, functioning firearm, I

5 don't know, really don't know.

6 BY MR. FURMAN:

7 Q Are you personally aware of how much

8 effort it takes or what tools you need in order to

9 assemble one of these weapons?

10 A You can't do it with, with, you know, a

11 couple screwdrivers and such. You have to have --

12 you have to do some drill items and other things,

13 piece it together.

14 Q Do you know about how long it takes to

15 assemble one of those firearms?

16 A Not off the top of my head, no.

17 Q Are instructions on how to assemble these

18 firearms readily available through the Internet or

19 otherwise?

20 A Yeah.

21 Q Can we go off the record?

22 MR. JACOB: Yeah.